



Office of the Attorney General

State of Texas

November 24, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR98-2862

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119897.

The City of Garland (the "city") received a request for 14 categories of information relating to a particular radar unit. You inform us that the city does not have documents responsive to items 1, 3, 5, 9, 11, 12, and 14 of the request.¹ You contend that the documents responsive to the remaining items of the request are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.²

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.

¹We note that the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information in response to an open records request. Open Records Decision Nos. 605 (1992), 572 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

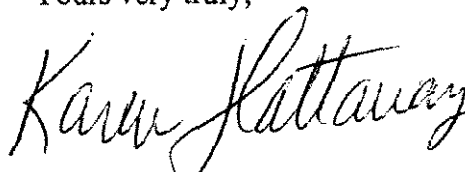
App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You state that a case to which the city is a party is currently pending in the Garland Municipal Court. You have explained how the documents at issue are related to this pending litigation. Therefore, we find that you have met your burden under section 552.103(a).

We note, however, that one of the submitted documents is a traffic citation. Section 552.103(a) generally may not be invoked to except front page offense report information from disclosure.³ See Open Records Decision No. 597 (1991). For this reason, the city may not withhold front page information from traffic citations pursuant to section 552.103(a). The city may withhold the remaining information from disclosure under section 552.103(a).

In reaching this conclusion, we assume that the opposing party in the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Finally, we also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

³Information normally found on the front page of an offense report is generally considered public. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Such information is considered to be public, even if it is not actually located on the front page of an offense report.

Ref: ID# 119879

Enclosures: Submitted documents

cc: Ms. Betty Wright Perkins
208 Scenic Drive
Heath, Texas 75032
(w/o enclosures)